IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 142 of 2003

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAMESHBHAI MOHANBHAI KOLI

Appearance:

1. Criminal Revision Application No. 142 of 2003

MR SS PATEL APP for Petitioner No. 1

HL PATEL ADVOCATES for Respondent No. 1-4,8

MR ASHISH D OZA for Respondent No. 5

NOTICE SERVED for Respondent No. 6

MR PM DAVE for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 26/08/2003

ORAL JUDGEMENT

Heard Mr.S S Patel learned APP appearing on behalf of the State and Ms.Jayshree Patel appearing on behalf of M/s.H L Patel Advocates for respondent nos.1-4 and 8.

2. It seems that during the course of trial, PW-73, Chandulal Dalpatram, was examined before the learned Addl. Sessions Court at Gondal, Rajkot District in Sessions Case No.34/2000 at Ex.546. There the witness did not support the prosecution case. He was, therefore, treated hostile by the prosecution and without the leave of the Court, he was cross-examined by the learned Addl. Public Prosecutor appearing for the State. In the meantime, an application was submitted by the prosecution before the trial court for obtaining handwriting of the said witness for being compared with the disputed handwriting. The trial court heard the parties and by a reasoned order rejected the said application of the prosecution.

3. Feeling aggrieved by the said order of the trial court, the State has preferred this revision application before this Court. On hearing, it is found that the trial court has clearly observed that the provisions made in Section 73 of the Evidence Act cannot be used for collecting evidence against any witness or any accused. In the present case, we find that the witness may not have supported the case of the prosecution. The prosecution could cross-examine the witness and it has so been done also. However, so far the collection of handwriting is concerned, it would not be treated to be just and proper to compel the witness to give his specimen handwriting for being compared u/s. 73 of the Evidence Act. It is more so when a request was made to the Court to get handwritings of a witness standing in the witness box. In above view of the matter, I am of the view that the trial court was not unjustified in rejecting the said prayer. In other words, the impugned order cannot be treated to be illegal, so as to invoke revisional jurisdiction of this Court u/s. 397 of the said Code. The prosecution had other ways open to deal with the subject, instead of applying for getting specimen handwritings of the witness. In above view of the matter, when the order is not found to be illegal, it would not be open to interfere with the said order and consequently, the revision application is without any merit and it deserves to be dismissed.

4. For the foregoing reasons, the revision application is ordered to be dismissed. Notice stands discharged. Interim stay granted against further

prosecution and trial, stands vacated. The office shall sent a copy of the order to the learned Addl. Sessions Court, Rajkot District at Gondal.

(D. P. Buch, J.)

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